



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **29 CFR Part 2520**

#### **RIN 1210-AB97**

### **Annual Reporting and Disclosure**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Final rule; technical correction; change to operational date.

**SUMMARY:** On February 24, 2023, the Employee Benefits Security Administration for the U.S. Department of Labor (the Department or DOL) published a final rule on annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document contains two technical changes to the regulations: it changes the operational date of the final rule amendments to the regulations to address the Congressional Review Act (CRA) requirement under which a major rule cannot be effective until 60 days after publication in the Federal Register or receipt by Congress, whichever is later. The other corrects a typographical error in the lettering of a paragraph in the regulations.

**DATES:** This final rule is effective May 31, 2023. The operational date of the amendments published at 88 FR 11793 is changed from April 25, 2023, to May 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Janet Song, Florence Novellino or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8500 (this is not a toll-free number).

### **SUPPLEMENTARY INFORMATION:**

#### **A. Background**

On February 24, 2023, the Department of Labor (DOL or Department), the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) published Federal Register notices that announced changes to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan. For DOL, the final rule included a Notice of Final Forms Revisions (Final Forms Revisions) jointly issued by the DOL, IRS and PBGC, and a DOL-only Final Rule (Final Rule) that made corresponding changes to the DOL annual reporting regulations under Title I of ERISA .<sup>1</sup>

Pursuant to the Congressional Review Act (CRA), OMB designated the final rule as a “major rule,” as defined by 5 U.S.C. 804(2).<sup>2</sup> The changes to the annual return/report forms, instructions, and regulations are applicable to annual return/reports for plan years beginning on or after January 1, 2023, (see 88 FR 11984). Annual return/reports generally are due to be filed beginning seven months after the end of the applicable plan year (e.g., July 31, 2024, for 2023 annual return/reports for calendar year plans). The Final Rule had a stated effective date of April 25, 2023, (see 88 FR 11793).

The Final Rule included additions to the ERISA annual reporting regulations to implement the directive to the Secretary of Labor in section 202 of the Setting Every Community Up for Retirement Enhancement Act of 2019, commonly known as the SECURE Act, to jointly

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<sup>1</sup> See Notice of Final Forms Revisions at 88 FR 11984 and Final Rule at 88 FR 11793. The DOL, IRS, PBGC treat the Form 5500 annual return/report as an “information collection” subject to the Paperwork Reduction Act (PRA), but, due to the statutory and regulatory provisions in Title I of ERISA governing annual reporting by employee benefit plans, DOL changes to the forms and instructions generally are rules under the Administrative Procedure Act (APA). Sometimes changes in the forms and instructions do not require changes to the DOL’s underlying reporting regulations. In those cases, one Federal Register notice is used as both the PRA notice and the APA rulemaking document. See, e.g., [www.federalregister.gov/documents/2022/05/23/2022-10658/annual-information-return-reports](https://www.federalregister.gov/documents/2022/05/23/2022-10658/annual-information-return-reports). When changes to the forms and schedules require amendments to DOL’s annual reporting regulations (as they did here with the addition of new schedules and a new reporting option), there is a tri-agency notice with IRS and PBGC that includes the PRA sections and DOL publishes a separate notice with the regulatory amendments and the APA rulemaking components (e.g., regulatory impact analysis and CRA classification). The Final Forms Revisions and Final Rule include cross-references that are intended to communicate the connectedness of the notices as a final rule.

<sup>2</sup> See 88 FR at 11797.

with the Secretary of the Treasury provide for a single, consolidated Form 5500 filing option that would satisfy the annual reporting obligations for the defined contribution pension plans participating in a Defined Contribution Group (DCG) reporting arrangement. The Final Rule included newly added regulations at 29 CFR 2520.103-14 and 2520.104-51 setting forth requirements applicable to the DCG reporting arrangement, the participating plans, and the content of the consolidated Form 5500 filing.

## **B. CRA Date**

The CRA requires that before a final rule can take effect it must be submitted to the Senate and the House of Representatives and to the Government Accountability Office (GAO), along with a concise general statement of the rule and its effective date.<sup>3</sup> Under the CRA, as pertinent here, the effective date of a major rule (which corresponds to an operational date in a **Federal Register** rule document) must be no earlier than “the later of the date occurring 60 days after the date on which . . . the Congress received the [required] report . . . or . . . the rule is published in the **Federal Register** . . . .” As noted above, the Final Rule and Final Forms Revisions were designated as a major rule for DOL and were published in the Federal Register on February 24, 2023. Although the report to GAO was delivered via the GAO electronic process for CRA submissions<sup>4</sup> on February 24, 2023, the Congressional Record reflects that the House received the final rule on February 28, 2023, 169 Cong. Rec. H1111 (daily ed. Mar. 3, 2023), and the Senate on March 6, 2023, 169 Cong. Rec. S858 (daily ed. March 21, 2023). As noted above, the Final Rule’s notice at 88 FR 11793 published on February 24, 2023, in the **Federal Register**, has a stated effective date of April 25, 2023 (which means that the **Federal**

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<sup>3</sup> See 5 U.S.C. 801– 808. Under the Congressional Review Act (CRA) two types of rules, major and nonmajor, must be submitted to both Houses of Congress and GAO before either can take effect. CRA defines a “major” rule as one which has resulted in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

<sup>4</sup> See GAO’s CRA FAQ at [www.gao.gov/legal/other-legal-work/congressional-review-act](http://www.gao.gov/legal/other-legal-work/congressional-review-act).

**Register** rule's operational date was also April 25, 2023). Therefore, based on the dates of House and Senate receipt, that stated CRA effective date is earlier than 60 days after the receipt by Congress of the published final rule. In light of the fact that the April 25 effective date has passed, this final rule changes the operational date of April 25, 2023 to May 31, 2023, a date that is later than 60 days after receipt of the published rule by Congress.

### **C. 29 CFR 2520.103-14 Paragraph Lettering**

The Final Rule added 29 CFR 2520.103-14 as a new annual reporting regulation that sets forth requirements for the consolidated annual report for a DCG reporting arrangement. The preamble of the Final Rule stated that paragraph (c) of § 2520.103-14 provides that DCG reporting arrangements must comply with the electronic filing requirements that apply to all plan filers and direct filing entities, including the requirement that the common plan administrator of all the participating plans that is filing the consolidated Form 5500 must maintain an original copy, with all required signatures, as part of its records (which also would be treated as records of each of the participating plans). The published regulatory text, however, omitted paragraph (c) and designated the paragraph as paragraph (d). The Department is correcting the paragraph lettering to designate the paragraph as paragraph (c).

### **D. Good Cause Findings under 5 U.S.C. 553(b)(3)(B) and 553(d)(3)**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), an agency is required to publish a notice of the proposed rule in the Federal Register before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a substantive rule. Sections 553(b)(3)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(3)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and

includes a statement of the finding and the reasons for it in the rule. Similarly, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where good cause is found and the agency includes in the rule a statement of the finding and the reasons for it.

The Department is publishing the change of the operational date without advance notice or an opportunity for comment because it falls under the “good cause” exemption of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Undertaking notice and comment procedures to incorporate the corrections in this document would be contrary to the public interest because it is in the public interest to timely provide a final rule that accurately reflects changes to the annual return/report forms, instructions, and regulations that are applicable to annual return/reports for plan years beginning on or after January 1, 2023. Further, such procedures would be unnecessary because the Department is not making substantive revisions to the Final Rule, but rather, it is changing the operational date by 36 days from April 25, 2023, to May 31, 2023, to reflect the CRA requirement that the effective date be no earlier than 60 days from receipt of the rule by the Congress. The Department, accordingly, finds good cause under 5 U.S.C. 553(b)(3)(B) to waive public comment. For the same reasons, the Department similarly finds good cause under 5 U.S.C. 555(d)(3) to avoid the 30-day delay in effective date after issuance of a substantive rule.<sup>5</sup>

### **List of Subjects in 29 CFR Part 2520**

Accounting, Employee benefit plans, Freedom of information, Pensions, Public assistance programs, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 29 CFR part 2520 is amended as follows:

### **PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE**

1. The authority citation for part 2520 continues to read as follows:

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<sup>5</sup> The Department is not making a “good cause” findings for fixing the typographical error in the paragraph lettering in 29 CFR 2520.103-14 because it does not impose any new or substantive requirement subject to the APA notice and comment or effective date provisions.

**Authority:** 29 U.S.C. 1002(44), 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; and Secretary of Labor’s Order 1–2011, 77 FR 1088. Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101-5 also issued under 29 U.S.C. 1021 note; sec. 501, Pub. L. 109-280, 120 Stat. 780; sec. 105(a), Pub. L. 110-458, 122 Stat. 5092. Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note; sec. 1510, Pub. L. 105-34, 111 Stat. 1068.

**§ 2520.103-14 [Amended]**

2. In § 2520.103-14, redesignate paragraph (d) as paragraph (c).

Signed at Washington, D.C., this 26th day of April, 2023.

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Lisa M. Gomez, Assistant Secretary,  
Employee Benefits Security Administration, U.S. Department of Labor.

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